

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

KATORIA S. WILLIAMS, and	]	
DEMETRI M. FAULKNER,	]	
	]	
Plaintiffs,	]	
	]	
vs.	]	No. 2:17-cv-2284-TLP-cgc
	]	
SHELBY COUNTY SCHOOL	]	
SYSTEM, MEMPHIS CITY SCHOOL	]	
SYSTEM, MARJORIE N. DOUGLAS,	]	
and SHELBY COUNTY BOARD OF	]	
EDUCATION,	]	
	]	
Defendants.	]	

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**MOTION TO INTERVENE AND INCLUDED MEMORANDUM OF LAW  
OF THE STATE OF TENNESSEE**

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The State of Tennessee moves to intervene in this case pursuant to Fed. R. Civ. P. 5.1(c) for the limited purpose of defending the constitutionality of Tenn. Code Ann. § 29-20-113, if the Court should reach that issue. The affected parties have indicated that they do not oppose the State's intervention in this case.

In partial response to Defendant Marjorie Douglas's request for an award of attorneys' fees, Plaintiffs have challenged the constitutionality of this state statute, filing a Notice of Constitutional Question and Motion for this Court to Certify Pursuant to 28 U.S.C. § 2403 on November 14, 2018. (ECF No. 152.) Plaintiffs subsequently filed a request to stay this case pending a ruling on the statute's constitutionality, as well as a memorandum in support of their constitutional challenge. (ECF Nos. 155, 158.) Pursuant to Fed. R. Civ. P. 5.1(a) and (c), when a party has drawn the constitutionality of a state statute into question, "the [state] attorney general

may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier.”

In reply to the Plaintiffs’ constitutional challenge, Defendant Douglas noted that “it is well-settled that the Court should avoid a constitutional issue when possible,” and she asserted that “the Court can award Douglas her attorney’s fees and expenses against plaintiffs and their counsel, without addressing the constitutionality of Section 29-20-113, under [the other statutes and authorities on which she based her request for attorneys’ fees].” (ECF No. 159 at 5 (citing ECF Nos. 110, 112.) Accordingly, the State requests that it be afforded 30 days in which to file a brief on the merits of the constitutional issue, but only if the Court should determine that it needs to reach the issue.

Pursuant to LR7.2(a)(1)(A) a proposed order granting the requested relief is submitted in a word processing format to the Court’s ECF mailbox.

WHEREFORE, the State of Tennessee respectfully requests that its Motion to Intervene be granted and that, if the Court should find it necessary to reach the merits of Plaintiffs’ challenge to the constitutionality of Tenn. Code Ann. § 29-20-113, the State be afforded 30 days within which to file a brief on the merits of that constitutional challenge. Pursuant to LR 7.2(a)(1)(A), a proposed order granting the State’s motion to intervene is submitted in a word processing format to the Court’s ECF mailbox.

Respectfully submitted,

HERBERT H. SLATERY III  
Attorney General and Reporter

s/James R. Newsom III

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#### **CERTIFICATE OF CONSULTATION**

I hereby certify pursuant to LR7.2(a)(1)(B) that I consulted with Darrell J. O'Neal, Esq., counsel for Plaintiffs by telephone on January 7, 2019, and with M. Dale Conder, Jr., Esq., counsel for Defendant Marjorie Douglas by telephone on January 8, 2019 regarding the relief requested in this Motion. Each party agreed to the request for intervention. Each party agreed that, the State should be afforded 30 days in which to file a brief on the merits of the constitutionality of Tenn. Code Ann. § 29-20-113, but only if the Court should determine that it needs to reach the issue.

s/James R. Newsom III

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## CERTIFICATE OF SERVICE

I hereby certify that on this the 8th day of January, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing report. Parties may access this filing through the Court's electronic filing system.

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